

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

JAMES A. WILSON,)	
)	
Petitioner,)	
)	
v.)	Civ. A. No. 04-1363-GMS
)	
RICHARD KEARNEY, Warden,)	
et. al.,)	
)	
Respondents.)	

ORDER

At Wilmington this 21st day of March, 2005;

IT IS ORDERED that:

1. Petitioner James A. Wilson's motion for default judgment is DENIED. (D.I. 6.)

Whether a default judgment is even available in a habeas corpus proceeding is subject to debate. *See Lemons v. O'Sullivan*, 54 F.3d 357, 365 (7th Cir. 1995) ("Default judgment is an extreme sanction that is disfavored in habeas corpus cases"); *Gordon v. Duran*, 895 F.2d 610, 612 (9th Cir. 1990) ("The failure to respond to claims in a petition for habeas corpus does not entitle the petitioner to a default judgment"); *Aziz v. Leferve*, 830 F.2d 184, 187 (11th Cir. 1987); *Allen v. Perini*, 424 F.2d 134, 138 (6th Cir. 1970). Regardless, the record indicates that the respondent never received a copy of the court's December 6, 2004 order to answer Wilson's § 2254 petition. Thus, the respondent's failure to comply with the order does not warrant an entry of default. *See* Rule 5(a) of the Rules Governing Section 2254 Cases; Fed. R. Civ. P. 55.

2. Wilson's motion for the court to rule on his motion for default judgment is DENIED as moot. (D.I. 7.)

3. The clerk of the court shall serve a copy of this order and a copy of the court's order dated December 6, 2004 (D.I. 5), along with the documents mentioned in the December 6, 2004 order, upon: (1) the above-named Warden of the facility in which petitioner is housed; and (2) the Attorney General of the State of Delaware.

4. The clerk of the court shall send a copy of this order to Wilson.

Gregory M. Sleet /s/

UNITED STATES DISTRICT JUDGE